

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NO.15833 OF 2007

DATED 30th JULY 2007

BETWEEN:

Chintakayala Mutyalu

... Petitioner

AND

The State of Andhra Pradesh, rep.by the District Collector-cum-election Officer for Gram Panchayat Elections, Visakhapatnam District and others.

... Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.15833 OF 2007

ORDER:

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The writ petition is filed praying this Court to issue a writ of Prohibition directing third respondent, namely, Principal Senior Civil Judge-cum-Election Tribunal, Anakapally, not to commence the trial in E.O.P.No.6 of 2006, pending calendar case No.75 of 2007 on the file of Court of the V Metropolitan Magistrate, Anakapally and W.P.No.18914 of 2006 before this Court. The petitioner also prayed for stay of all further proceedings in E.O.P.No.6 of 2006.

The petitioner successfully contested the election held to the office of Sarpanch of Mutyalammappalem Village of Paravada Mandal in Visakhapatnam District. He defeated second respondent in the election held on 06.08.2006. The petitioner was declared elected by a margin of 157 votes. On 10.08.2006, Mandal Revenue Officer (MRO) lodged a complaint before the Station House Officer, P.S., Paravada on the basis of letter given by second respondent. A crime, being crime No.128 of 2006, was registered by P.S., Paravada, under Sections 468, 471 and 420 of Indian Penal Code (IPC). It was alleged in the complaint that voters produced forged caste certificates in proof of their identity while casting their votes on 06.08.2006. The petitioner filed W.P.No.18914 of 2006 to quash First Information Report (FIR). This Court while admitting writ petition directed the Commissioner of Police, Visakhapatnam, to submit a report. Thereafter, second respondent filed Election O.P.No.6 of 2006 on the file of third respondent alleging that petitioner brought 450 voters from other villages to cast bogus votes by impersonation. It was also alleged that all the voters produced forged documents to impersonate the voters to cast votes in favour of petitioner. It was also alleged by second respondent that all the forged caste certificates were handed over to MRO, Paravada, who filed crime No.128 of 2006, based on which, CC No.75 of 2007 was taken cognizance of by Court of V Metropolitan Magistrate, Anakapally.

The petitioner alleges that the main allegation in election O.P., as well as criminal case is the same and that petitioner is entitled to protect his defence. If he is allowed to disclose his defence in the E.O.P., the same would prejudice the criminal trial against petitioner. The election O.P.No.6 of 2006 is coming up for trial and is coming up for cross-examination of P.W.1. The petitioner, therefore, seeks stay of the trial.

Learned counsel for petitioner submits that the High Court or the Court of equal jurisdiction (criminal Court) is seized of the matter, suffers from inherent lack of jurisdiction to proceed with the election O.P., filed under Section 233 of A.P. Panchayat Raj Act, 1994 (the Act, for brevity). He placed reliance on the decision of this Court in **Oil and Natural Gas Corporation Limited v N.Satyanarayana**^[1], in support of the contention that when inferior Tribunal suffers from inherent lack of jurisdiction, a writ of Prohibition would lie even if question of jurisdiction is not raised before such Tribunal by the party aggrieved.

Under Article 243-O (b) of Constitution of India and Section 233 of the Act, an election to any Panchayat cannot be called in question except by way of election petition presented to such authority in accordance with Rules. In exercise of powers under Section 233 read with Section 268(1) (rule making power) of the Act, the Government promulgated Andhra Pradesh Panchayat Raj (Election Tribunals in respect of Gram Panchayats, Mandal Parishads and Zilla Parishads) Rules, 1995 (for short, the Rules). In respect of election of members and Sarpanch of Gram Panchayat, the Junior Civil Judge, and if more than one such Judges are available, the Principal Junior Civil Judge having jurisdiction over the matter is constituted as Election Tribunal under Rule 2(2) of the Rules. Under Rule 2(3) of the Rules, Election Tribunal exercising jurisdiction under the Rules shall be deemed to exercise such jurisdiction as a person designate and not in his capacity as a Judge or officer. Therefore, third respondent, namely, Principal Senior Civil Judge, Anakapalli, is not the Election Tribunal for resolving the dispute in relation to the election to the office of Sarpanch of Mutyalammalem village. As seen from the documents annexed to writ petition, indeed second respondent filed the election O.P., before the Court of Principal District Munsif-cum-Election Tribunal, but curiously the Principal Senior Civil Judge is arrayed as third respondent. To say in other words, the duly constituted Election Tribunal against whom a writ of Prohibition is sought is not made party to the writ petition. On this ground alone, the writ petition is liable to be dismissed. However, learned counsel for petitioner proceeded as if the petitioner is seeking writ of Prohibition against the Principal Junior Civil Judge, Anakapalli.

The submission that pending the writ petition and criminal case before the criminal Court, the Election Tribunal cannot proceed with the election O.P., or by reasons of such pendency, the Election Tribunal suffers from inherent lack of jurisdiction is wholly misconceived. There is no such public law principle, which disables a duly constituted statutory Tribunal from proceeding with the case

merely because a criminal case is pending with reference to a document, which might or might not be a piece of evidence in election case. Even assuming that the forged caste certificates used by impersonating voters is subject matter of election O.P., the mere pendency of a criminal case is in relation to the same document, cannot bar Election Tribunal from proceeding with the case. A writ of Prohibition cannot be granted except in a case of want of jurisdiction in the Tribunal whose action is sought to be prohibited. Secondly, if the grievance is redressible in the ordinary course of judicial proceedings like appeal or revision or review, a writ of Prohibition cannot be issued to prevent inferior Tribunal from exercising its statutory powers.

In **Thirumala Tirupati Devasthanams v Thallapaka Ananthacharyulu**^[2], Supreme Court reiterated the scope of writ of Prohibition in the following manner.

A writ of prohibition is normally issued only when the inferior court or tribunal (*a*) proceeds to act without or in excess of jurisdiction, (*b*) proceeds to act in violation of the rules of natural justice, (*c*) proceeds to act under law which is itself ultra vires or unconstitutional, or (*d*) proceeds to act in contravention of fundamental rights. The principles, which govern the exercise of such power, must be strictly observed. **A writ of prohibition must be issued only in rarest of rare cases. Judicial discipline of the highest order has to be exercised whilst issuing such writs. It must be remembered that the writ jurisdiction is original jurisdiction distinct from appellate jurisdiction. An appeal cannot be allowed to be disguised in the form of a writ. In other words, this power cannot be allowed to be used “as a cloak of an appeal in disguise”. Lax use of such a power would impair the dignity and integrity of the subordinate court and could also lead to chaotic consequences.**

(emphasis supplied)

In view of the above, the writ petition for writ of Prohibition is wholly misconceived. If petitioner apprehends that during the course of trial in the election O.P., he would be compelled to disclose his defence in criminal case, his remedy is else where, but an order directing Principal Senior Civil Judge, not to proceed with the O.P., is not appropriate remedy.

The writ petition is therefore dismissed. No costs.

(V.V.S.RAO,J)

30.07.2007.

pln

[\[1\]](#) 2003 (3) ALD 711

[\[2\]](#) (2003) 8 SCC 134